English authority, which the principal case expressly follows, is *contra*. *Ibid.* But covenants in support of an easement according to the American view run at law as well as equity. *Denman* v. *Prince*, 40 Barb. (N. Y.) 213; see 23 HARV. L. REV. 298. The principal case, therefore, not only overrules the earlier cases as to affirmative equitable servitudes, but adopts the English view that an easement does not make sufficient privity of estate to permit the burden of a covenant to run at law.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — EFFECT OF TEMPORARY BREACH NOT CONTRIBUTING TO LOSS. — The insured in his application agreed not to engage in the business of handling electric wires and dynamos for one year following the date of the policy. The policy expressly made the application a part of the contract of insurance. The insured did enter the business during the year, and his death occurred while so engaged after the expiration of the year. *Held*, that the beneficiary may recover. *Edmonds* v. *Mutual Life Insurance Co.*, 144 N. W. 718 (S. D.).

The breach of a material representation or a warranty as to a present fact, though not contributing to the loss, avoids an insurance policy. *McGowan* v. *Supreme Court of Independent Order of Foresters*, 104 Wis. 173, 80 N. W. 603; *Johnson* v. *Maine & New Brunswick Ins. Co.*, 83 Me. 182, 22 Atl. 107. The same rule applies to the breach of a condition or promissory warranty continuing to the time of the loss. *Norwaysz* v. *Thuringia Ins. Co.*, 204 Ill. 334, 68 N. E. 551; *Hill* v. *Middlesex Fire Ins. Co.*, 174 Mass. 542, 55 N. E. 319. *Contra*, *Joyce* v. *Maine Ins. Co.*, 45 Me. 168. Likewise the policy is void if the breach existed from the outset even if it ceased before and had no causal connection with the loss. *Georgia Home Ins. Co.* v. *Rosenfield*, 95 Fed. 358. When such a temporary breach, however, arises after the issuance of the policy, there is a conflict of authority. The English courts hold that the policy is void. *De Hahn* v. *Hartley*, 1 T. R. 343; *Birrell* v. *Dryer*, 9 A. C. 345; STAT. 6 EDW., VII, c. 41, § 34 (2). The better American view is in accord. *Douglas* v. *Knickerbocker Life Ins. Co.*, 83 N. Y. 492; *Moore* v. *Phoenix Ins. Co.*, 62 N. H. 240; *Kyte* v. *Commercial Union Ins. Co.*, 149 Mass. 116, 21 N. E. 361. Many cases apparently holding that the policy is merely suspended are distinguishable because the policy expressly so provided or no real breach occurred. *Union Life Ins. Co.* v. *Hughes' Adm'r.*, 110 Ky. 26, 60 S. W. 850; *Kircher* v. *Milwaukee Mutual Ins. Co.*, 74 Wis. 470, 43 N. W. 487. But some courts clearly hold with the principal case. *Sumter Tobacco Co.* v. *Phoenix Ins. Co.*, 76 S. C. 76, 56 S. E. 654; *Insurance Co. of North America* v. *Pitts*, 88 Miss. 587, 41 So. 5. As the application in the principal case was incorporated as a part of the insurance contract, its promises become warranties in the policy. *Mutual Life Ins. Co.* v. *Kelly*, 114 Fed. 268. The effect then is the same as if the policy expressly provided for forfeiture on a breach by the insured. *Brignac* v. *Pacific Mutual Life Ins. Co.*, 112 La. 574, 36 So. 595. The view in accord with the principal case, therefore, disregards the stipulations of the contract and causes the insurance to be continued on a different basis from that intended. A statute rather than judicial legislation seems the proper way to prevent forfeiture in such cases, if that be desired. See HOWELL'S MICH. STATS. § 8348; IOWA CODE, § 1743.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACTS — EMPLOYEES PROTECTED BY ACT. — The plaintiff's intestate, a locomotive fireman, had prepared his engine for a trip between two points within a state, the train containing cars which had just arrived from another state. While on the company's premises, but before the journey had actually begun, the deceased was run over and killed. The accident was due to the negligence of a fellow servant. Action was brought, but not in proper form for